



## STATE OF CONNECTICUT OFFICE OF STATE ETHICS

**NOTE: The following is a draft response to a request for an advisory opinion prepared for consideration by the Citizen's Ethics Advisory Board. It does not necessarily constitute the views of the Board.**

TO: Board Members

FROM: Brian J. O'Dowd, Assistant General Counsel

RE: Complimentary Tickets to an Inaugural Ball Offered to Public Officials by the Event's Sponsor

DATE: March 18, 2010

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### Introduction

The Citizen's Ethics Advisory Board issues this advisory opinion at the request of Lt. Colonel (Ret.) Dennis Conroy ("Petitioner"), President of the Trustees of the First Company Governor's Foot Guard, whose inquiry pertains to the Board's invitation of state elected and appointed officials to be its guests at an Inaugural Ball.

### Facts

The following facts are relevant to this advisory opinion. In 1771, the General Assembly charted the First Company Governor's Foot Guard ("Foot Guard"), a component of the Connecticut Military Department that has, since its creation, played a major role on Inauguration Day. Its duties in that regard have ranged from "escorting the Governor to and from inauguration ceremonies to hosting an Inaugural Ball in honor of the Inauguration of our elected State Officers and in particular the Governor."<sup>1</sup> Indeed, "[t]he tradition of a social event and the [Foot Guard] can be traced back to 1791 . . . ."<sup>2</sup>

In 1886, the General Assembly established, by resolution, the Trustees of the First

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<sup>1</sup>Letter from Lt. Col. (Ret.) Dennis Conroy, President, Trustees of the First Company Governor's Foot Guard, to the Citizen's Ethics Advisory Board (January 27, 2010) (on file with the Office of State Ethics).

<sup>2</sup>Id.

Company Governor's Foot Guard ("Board of Trustees"), the Foot Guard's corporate arm, whose purpose is this:

Said corporation may receive, hold, invest, and manage for the benefit of said company any property that may be devised, be gathered, or otherwise given to it, and any devise, bequest, or legacy of any property to said company shall vest such property in said corporation, and the same shall be held, invested, and managed by it for the use and benefit of said company.<sup>3</sup>

The Board of Trustees—which is neither a registrant, nor a person regulated by, doing business with, or seeking to do business with any state agency—is the entity that “would . . . actually hold any Inaugural Ball”; and the event’s purpose would be two-fold: to honor “the Inauguration of our elected State Officers and in particular the Governor,” and “to raise funds to support and maintain its armory located at 159 High Street in Hartford.”<sup>4</sup> The Inaugural Ball will be open to the general public, with (yet-to-be-determined) ticket prices exceeding \$100.

## Question

Petitioner asks whether the “Governor and other State elected and appointed officials are allowed . . . to accept an invitation to be honored guests of the [Board of Trustees] at an Inaugural Ball,”<sup>5</sup> without violating the gift rules in the Code of Ethics for Public Officials, chapter 10, part 1, of the General Statutes (“Code”).

## Conclusion

We conclude that public officials invited by the Board of Trustees to attend the Inaugural Ball by virtue of their state positions may accept admission to the event, including any food or beverage provided there, under the charitable/civic-event gift exception in General Statutes § 1-79 (e) (14).

## Analysis

As a threshold matter, because Petitioner has inquired only as to “State elected and appointed officials,”<sup>6</sup> we need only consider the rules regarding the receipt of gifts by

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<sup>3</sup>Id.

<sup>4</sup>Id.

<sup>5</sup>Id.

<sup>6</sup>Id.



“public officials,” as defined in General Statutes § 1-79 (k).<sup>7</sup> The term “public official” expressly excludes “a member of an advisory board, a judge of any court either elected or appointed or a senator or representative in Congress,” but includes the following individuals:

any state-wide elected officer, any member or member-elect of the General Assembly, any person appointed to any office of the legislative, judicial or executive branch of state government by the Governor or an appointee of the Governor, with or without the advice and consent of the General Assembly, any public member or representative of the teachers’ unions or state employees’ unions appointed to the Investment Advisory Council pursuant to subsection (a) of section 3-13b, any person appointed or elected by the General Assembly or by any member of either house thereof, any member or director of a quasi-public agency and the spouse of the Governor . . . .<sup>8</sup>

Invitees to the Inaugural Ball who meet that definition (for example, the Governor, his or her spouse, members of the General Assembly) must comply with the Code’s gift rules, which differ depending on whether we have a restricted or non-restricted donor, so we must determine the type of donor we are dealing with.

Restricted donors—from whom public officials may not knowingly accept any “gift”<sup>9</sup>—include the following categories of persons: registrants (i.e., persons required to register as lobbyists); persons prequalified under General Statutes § 4a-100 (i.e., prequalified building contractors); and persons regulated by, doing business with, or seeking to do business with the public official’s department or agency.<sup>10</sup> In this case, because the Board of Trustees fits within none of those categories, it is not a restricted donor, but a non-restricted one, meaning that the gift prohibitions in subsections (j) and (m) of General Statutes § 1-84 do not apply here.

But that does not mean that public officials are free to accept lavish gifts from this non-restricted donor. The former State Ethics Commission (“SEC”)—relying on the

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<sup>7</sup>Other categories of individuals, such as state employees and immediate family members of state employees and public officials, are subject to the Code’s rules regarding the receipt of gifts. See General Statutes § 1-84 (j) and (m).

<sup>8</sup>General Statutes § 1-79 (k).

<sup>9</sup>Although the term “gift” is broadly defined as “anything of value, which is directly and personally received, unless consideration of equal or greater value is given in return”; General Statutes § 1-79 (e); there are seventeen exceptions to that definition. See General Statutes § 1-79 (e) (1) – (17).

<sup>10</sup>See General Statutes § 1-84 (j) and (m).

Code's use-of-office provision<sup>11</sup>—established a rule for benefits provided to a public official (and certain members of his or her family) from a non-restricted donor *by virtue of the public official's position*: “benefits with a cumulative value of less than one hundred dollars per person per year provided to a public official or immediate family member, by virtue of the official's position, by a non-[restricted] donor will be permitted.”<sup>12</sup> Stated slightly differently, if a public official accepts benefits from a non-restricted donor (like the Board of Trustees) by virtue of his or her position, those benefits must be limited to \$100 in a calendar year.<sup>13</sup>

Unless, that is, those benefits fit within one of the Code's seventeen gift exceptions,<sup>14</sup> namely, “items which are not considered ‘gifts’ for the purpose of calculating the gift limits under the Codes . . . .”<sup>15</sup> In Advisory Opinion No. 2003-13, asked whether the “\$100 allowance” from non-restricted donors “is in lieu of or in addition to” the Code's gift exceptions, the SEC answered: “the \$100 in benefits sanctioned under Advisory Opinion No. 98-9 is in addition to the legally unobjectionable benefits (e.g., ceremonial award, informational material, generally available discount, etc.) currently allowed by the Code.” In other words, a public official may accept up to \$100 in benefits yearly from a non-restricted donor by virtue of his or her position—plus any benefits falling within any of the Code's seventeen gift exceptions.

The benefit here (i.e., a complimentary Inaugural Ball ticket) is undoubtedly being offered to the public officials by virtue of their positions, and the benefit's value tops the \$100 allowance sanctioned in Advisory Opinion No. 98-9, so the question now is whether any gift exception applies. Of the seventeen gift exceptions, the most pertinent is the charitable/civic-event exception, found in § 1-79 (e) (14), which excludes the following from the definition of “gift”: “Admission to a charitable or civic event, including food and beverage provided at such event, but excluding lodging or travel expenses, at which a public official or state employee participates in his official capacity, provided such admission is provided by the primary sponsoring entity . . . .”

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<sup>11</sup>That provision, General Statutes § 1-84 (c), provides in relevant part: “No public official or state employee shall use his public office or position . . . to obtain financial gain for himself, his spouse, child, child's spouse, parent, brother or sister or a business with which he is associated.”

<sup>12</sup>Advisory Opinion No. 98-9; see also Regs., Conn. State Agencies § 1-81-16a. “In essence, the Commission concluded that benefits below this level were de minimis, and receipt of such items would not constitute an improper use of office.” Advisory Opinion No. 2003-13, citing Regs., Conn. State Agencies § 1-81-30 (a).

<sup>13</sup>Although in Advisory Opinion No. 98-9, the SEC set a monetary limit of “less than one hundred dollars” (i.e., \$99.99 or less), in a later opinion, Advisory Opinion No. 2003-13, the SEC set a monetary limit of \$100. We follow the more recent advisory opinion.

<sup>14</sup>See General Statutes § 1-79 (e) (1) – (17).

<sup>15</sup>Advisory Opinion No. 97-23.



Thus, under that exception, public officials may accept admission to the Inaugural Ball, including food or beverage provided at the event, if these three things hold true: (1) the event is a charitable or civic one; (2) the public officials are invited to *participate* in their official capacities; and (3) admission is provided by the primary sponsoring entity. Addressing those requirements in reverse order, admission to the Inaugural Ball will be provided by the primary sponsoring entity (namely, the Board of Trustees); and the public officials will be invited to *participate* in their official capacities, given that “the participation component of the provision is met by one’s *attendance* at the” charitable or civic event.<sup>16</sup>

That leaves for us to address the requirement that the event be a charitable or civic one. As explained by the SEC in its first interpretation of this exception:

A civic event . . . is an event which is held by a community group established to promote municipal activities or common goals of citizens within the community. (See The American Heritage Dictionary 277 (2nd ed. 1985) definition of “civic” which is “of, pertaining to, or belonging to a city, a citizen, or citizenship; municipal or civil.” “Civil” is defined as pertaining to citizens and their relations with the state or of ordinary citizens or ordinary community life.)<sup>17</sup>

In a subsequent advisory opinion, the SEC (in its words) “logically extend[ed] the definition to encompass statewide events . . . .”<sup>18</sup>

That said, given the nature and mission of the Board of Trustees (as described above), and the purpose underlying this centuries-old event—namely, to honor the inauguration of Connecticut’s newly elected officers and to raise funds for the Foot

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<sup>16</sup>(Emphasis added.) Advisory Opinion No. 2004-10. The SEC noted, by way of contrast, that “to qualify for the receipt of necessary expenses, including travel and lodging, pursuant to Conn. Gen. Stat. § 1-84 (k), the official’s participation must include substantive activities such as a speech or panel presentation.” *Id.*

<sup>17</sup>Advisory Opinion No. 97-28.

<sup>18</sup>Advisory Opinion No. 98-17 (concluding that a reception held by SNET at the State Capitol to honor the Connecticut members of the USA Women’s Olympic Hockey Team qualified as a “civic event” under § 1-79 (e) (14)). In that opinion, the SEC not only extended the definition of “civic event” to encompass statewide events, but also appears to have contradicted its definition of “civic event” in Advisory Opinion No. 97-28, which was this: “an event which is held by a community group established to promote municipal activities or common goals of citizens within the community.” (Emphasis added.) SNET most certainly is not such a (local or statewide) community group, and we therefore read the conclusion reached in Advisory Opinion No. 98-17 as an exception to the general rule, thus justifying the additional restrictions placed on the event at issue in that opinion.

Guard's armory—we cannot but conclude that the Inaugural Ball qualifies as a “civic event.”

The facts before us therefore satisfy the three requirements of the charitable/civic-event exception in § 1-79 (e) (14): that is, the event (i.e., the Inaugural Ball) qualifies as a civic one; the public officials will be invited to participate (i.e., attend) the event in their official capacities; and admission to the event will be provided by its primary sponsoring entity (i.e., the Board of Trustees). Accordingly, public officials who are invited by the Board of Trustees to attend the Inaugural Ball by virtue of their state positions may accept admission to the event, including food or beverage provided there.<sup>19</sup>

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<sup>19</sup>We note that certain public officials may also qualify in this instance for “necessary expenses” under General Statutes § 1-84 (k). “‘Necessary expenses’ means a public official’s or state employee’s expenses for an article, appearance or speech or for participation at an event, in his official capacity, which shall be limited to necessary travel expenses, lodging for the nights before, of and after the appearance, speech or event, meals and any related conference or seminar registration fees.” General Statutes § 1-79 (q).